

DEAR COLLEAGUE LETTER

DCL-12-12

DATE: September 19, 2012

TO: ALL STATE AND TRIBAL IV-D DIRECTORS

RE: Third-Party Verification of Employment Providers and the Fair Credit Reporting Act Requirements

Dear Colleague:

We have received several inquiries about whether the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681, et seq., applies to information requests to third-party verification of employment (VOE) companies and, if so, which rules and procedures impact the IV-D child support program.

Many employers contract with companies to respond to VOE requests from a variety of sources, such as state child support agencies or lenders. Several companies offering this service to employers—including the largest VOE provider, TALX (The Work Number)—are considered consumer credit reporting agencies and, therefore, are subject to the FCRA.

Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f) defines “consumer reporting agency” to include any “person” who assembles or evaluates information on individuals for the purpose of furnishing “consumer reports” to third parties. Under FCRA section 603(d), 15 U.S.C. 1681a(d), the term “consumer report” is defined as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living...” A state child support agency may be interested in requesting a consumer report to obtain information for case management purposes.

The FCRA requirements that apply to child support agencies depend on the purpose for requesting the information from a consumer reporting agency. The following three sections of the FCRA are relevant to child support agencies.

Information requests for enforcement of a child support order

Section 604(a)(4), 15 U.S.C. § 1681b(a)(4), requires the state child support agency to notify the noncustodial parent (NCP) at least 10 days prior to requesting information from a consumer reporting agency if the purpose is to establish the NCP’s ability to make child support payments or determine the appropriate level of payments. This section applies to requests for information for enforcement purposes. The state must provide the notice by certified or registered mail to the NCP’s last known address and indicate that the report will be requested from a consumer reporting agency.

Information requests for establishment or modification of a child support order

Section 604(a)(5) provides that any consumer credit reporting agency may furnish a consumer report “to an agency administering a State plan under section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.” This provision omits the advance notice requirement applicable to requests under section 604(a)(4).

Limited information requests

Section 608 states that “Notwithstanding the provisions of section 604 [§ 1681b] of this title, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.” The 10-day notification requirement does not apply; however, the information provided by the consumer credit reporting agency is limited to the data elements identified above.

States entering into agreements with third-party VOE providers should determine their purpose for requesting information from a consumer reporting agency and ensure that they are adhering to the requirements of the provisions cited above.

States have identified the following items associated with third-party VOE providers that are considered consumer credit reporting agencies subject to the FCRA:

- If a state requests the information for the purpose of establishing or modifying child support orders, under section 604(a)(5) of FCRA, 15 U.S.C. § 1681b(a)(5), the consumer reporting agency may provide all requested information contained in the consumer report. There is no advance notice required to be sent to the NCP.
- For enforcement cases, section 604(a)(4) of FCRA, 15 U.S.C. § 1681b(a)(4), requires states to notify the NCP at least 10 days prior to requesting information, via certified or registered mail, that a consumer report will be requested by the state child support agency. This requirement is the most prevalent issue cited by states for the following reasons:
 - Providing advance notification may potentially lead to the NCP terminating employment.
 - Sending the notification by certified/registered mail is an added cost to states.

To address this issue, state child support agencies should consider whether a request under section 604(a)(4) of FCRA, requiring advance notice to the NCP, is necessary, or whether the information the state requires may be provided under section 608 of FCRA.

State child support agencies may also consider requiring the employer to respond to the VOE request directly rather than accept the referral to an employer’s third-party VOE provider that is considered a consumer credit reporting agency under FCRA. Section 466(c)(1)(C) of the Social Security Act requires states to have laws in effect requiring

employers to promptly respond to and provide information on the employment, compensation and benefits of an NCP, including VOE requests.

We hope states will find this information useful when entering into agreements with third-party VOE providers and working with employers to obtain employment-related information.

If you have questions, please contact your OCSE Regional Office.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

cc: ACF/OCSE Regional Program Managers